

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**PATRICIA I. ANDERSON**  
Claimant

VS.

**AUGUSTA MEDICAL COMPLEX, INC.**  
Respondent

AND

**INSURANCE COMPANY OF NORTH AMERICA**  
Insurance Carrier

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Docket No. 180,414

## ORDER

Claimant requested review of the Award entered by Administrative Law Judge John D. Clark dated June 28, 1995. The Appeals Board heard oral argument on November 2, 1995.

## APPEARANCES

Claimant appeared by her attorney, Dale V. Slape of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Kirby A. Vernon of Wichita, Kansas. There were no other appearances.

## RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the Award.

## ISSUES

The Administrative Law Judge awarded claimant permanent partial disability benefits based upon a 4 percent functional impairment rating. Claimant appealed that finding and asked the Appeals Board to review the issue of the nature and extent of claimant's disability. The Appeals Board notes that the Administrative Law Judge's calculation of the award is incorrect and that will be corrected by this order.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and considering the briefs and arguments of the parties, the Appeals Board finds that the award by the Administrative Law Judge of a 4 percent permanent partial disability should be affirmed, but the calculation of the payment of the award should be corrected to conform to the provisions of K.S.A. 44-510e(a).

The Appeals Board adopts the findings and conclusions of the Administrative Law Judge. Claimant did sustain personal injury by accident arising out of and in the course of her employment with respondent on May 26, 1993. However, claimant unreasonably refused to perform accommodated work provided by respondent. Therefore, claimant should receive permanent partial disability benefits based upon her 4 percent functional impairment rating only. The analysis of the Administrative Law Judge in this regard is approved, following the rationale of the Kansas Court of Appeals in Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan. 1091 (1995). In Foulk, the Court of Appeals said:

“Construing K.S.A. 1988 Supp. 44-510e(a) to allow a worker to avoid the presumption of no work disability by virtue of the worker’s refusal to engage in work at a comparable wage would be unreasonable where the proffered job is within the worker’s ability and the worker has refused to even attempt the job. The legislature clearly intended for a worker not to receive compensation where the worker was still capable of earning nearly the same wage. Further, it would be unreasonable for this court to conclude that the legislature intended to encourage workers to merely sit at home, refuse to work, and take advantage of the workers compensation system.” Syl. ¶ 4.

The rationale of Foulk is applicable to this case because the Appeals Board finds claimant was offered an accommodated job by respondent within her restrictions and at a comparable wage. Although claimant in this case, unlike in Foulk, did attempt to perform the accommodated job, the Appeals Board finds her failed attempt was not done in good faith. The Appeals Board agrees with the finding by the Administrative Law Judge “that the Claimant did not make a bonafide attempt to work at an accommodated position for the Respondent.” Therefore, the wage claimant would have earned in the accommodated job is imputed to her such that claimant is not entitled to receive permanent partial general disability compensation in excess of the percentage of her functional impairment.

The findings of the Administrative Law Judge as set forth in the Award are hereby adopted by the Appeals Board as its own.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated June 28, 1995, should be, and is hereby modified as follows:

**WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Patricia I. Anderson, and against the respondent, Augusta Medical Complex, Inc., and its insurance carrier, Insurance Company of North America, for an accidental injury which occurred on August 26, 1993, and based upon an average weekly wage of \$272.43 for 13.81 weeks of temporary total disability compensation at the rate of \$181.63 per week or \$2,508.31, followed by 16.6 weeks of permanent partial disability compensation in the sum of \$181.63 per week or \$3,015.06 for a 4% permanent partial disability, making a total award of \$5,523.37 which is all due and owing claimant and which is ordered paid in one lump sum less any amounts previously paid.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Dale V. Slape, Wichita, KS  
Kirby A. Vernon, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director